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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,255	11/26/2003	David J. Yonce	279.627US1	6065
21186	7590	11/30/2005	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH 1600 TCF TOWER 121 SOUTH EIGHT STREET MINNEAPOLIS, MN 55402			FAULCON JR, LENWOOD	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

88

<b>Office Action Summary</b>	<b>Application No.</b> 10/723,255	<b>Applicant(s)</b> YONCE ET AL.	
	<b>Examiner</b> Lenwood Faulcon, Jr.	<b>Art Unit</b> 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-20 is/are allowed.
- 6) ☒ Claim(s) 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/6/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bornzin et al. (U.S. Patent No. 6,456,881).

Bornzin et al. teaches of a system and method for fusion detection in a multi-chamber stimulation device (col. 4 lines 29-32). Bornzin et al. also teaches of detecting an evoked response and comparing it to an evoked response template to determine if there is a match, which would indicate capture (col. 8 lines 31-42). Bornzin et al. further teaches of adjusting a pacing parameter before comparing a subsequent detected evoked response with an evoked response template (Figure 3). Bornzin et al. teaches that it is well known in the art that at the time of device implant, pacing parameters adjusted to insure a proper and optimum fitting to the patient (col. 1 lines 66-67, col. 2 lines 1-6, col. 6 lines 52-58).

### ***Allowable Subject Matter***

3. Claims 1-20 are allowed.
4. The following is an examiner's statement of reasons for allowance: claims 1-20 present allowable subject matter over the prior art since the prior art teachings do not teach of a cardiac rhythm management device and method that delivers paces to both

Art Unit: 3762

the right and left ventricles at a programmed biventricular offset interval and after a programmed AV delay interval with respect to an atrial event, then switches to left ventricle only pacing mode while recording an evoked response test electrogram, then compares the test electrogram to an evoked response template electrogram previously recorded during left ventricle only pacing, then adjusts the programmed AV delay interval to match the patient's current intrinsic AV interval and then returns to the biventricular pacing mode with the adjusted AV delay interval..

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kleks et al. (U.S. Patent No. 5,350,410), Lu et al. (U.S. Patent No. 5,458,623), Maarse (U.S. Patent No. 6,128,535), Lu (U.S. Patent No. 6,697,673), Sloman et al. (U.S. Patent No. 6,738,669), Kroll (U.S. 2001/0049543).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lenwood Faulcon, Jr. whose telephone number is 571-272-6090. The examiner can normally be reached on Monday-Thursday from 9 to 5 pm.

Art Unit: 3762

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes, can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lenwood Faulcon, Jr.



George Manuel

Primary Examiner